

<b>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</b>	
JUAN CARLOS AMOR GARCIA AND OCEAN CREEK INTERNATIONAL, LLC,  Plaintiffs,  -against-  ERNESTO COLMAN MENA, JAVIER ARTEGA, DYLAN JEANNOTTE, PEDRO LANGA, EAST RIVER INTERNATIONAL LLC, ANTONIO THOMAS INTERNATIONAL CORPORATION D/B/A VITAL DENT, GS ZAPA INTERNACIONAL, S.L., HUDSON RIVER INTERNATIONAL LLC, AND WALLKILL CREEK INTERNATIONAL LLC,  Defendants.	11 CIV. 3859 (RMB)(MHD)  <b><u>PLAINTIFFS' INITIAL DISCLOSURES PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1)</u></b>

Plaintiffs Ocean Creek International, LLC and Juan Carlos Amor Garcia (collectively "Plaintiffs") hereby submit their initial disclosures in accordance with Rule 26(a)(1) of the Federal Rules of Civil Procedure.

**I. GENERAL STATEMENTS**

1. Plaintiffs' initial disclosure is made without the benefit of any discovery from Defendants, and is made prior to Defendants' Answers. The addresses and telephone numbers provided are those in Plaintiffs' possession and may not be current. With respect to those individuals as to which Plaintiffs have provided no address and/or telephone number, Plaintiffs are not in possession of any such address and/or telephone number. Plaintiffs reserve the right

to supplement and/or amend these disclosures as appropriate during the course of this action. Plaintiffs also reserve the right to object to the future disclosure of any documents and/or information.

2. The information and/or documentation herein provided is not a concession by Plaintiffs that any person identified herein may be in possession of information that is material and/or relevant to the issues in this litigation.

3. The information herein provided is not a concession by Plaintiffs that any such information may be material and/or relevant to the issues in this litigation.

4. Plaintiffs' Initial Disclosures are not intended to waive any objections to inter-alia, the privileged nature, admissibility, or relevancy of the testimony of any person listed herein, or of any information herein provided, at any proceeding including without limitation the trial of this litigation. The submission of or reference to in Plaintiffs' Initial Disclosures of any information or documentation that is protected from disclosure under any privilege including the attorney client privilege, or that is protected from disclosure under any doctrine including the attorney work product doctrine, does not waive and is not to be construed as a waiver of any such privilege or doctrine.

5. The inclusion of Plaintiff Garcia's name and telephone number is not to be construed as authorization to Defendants' counselors to contact such Plaintiff directly.

**Rule 26(a)(1)(A)(i)**

**I. THE FOLLOWING INDIVIDUALS MAY HAVE DISCOVERABLE INFORMATION THAT PLAINTIFFS MAY USE TO SUPPORT THEIR CLAIMS:**

1. Javier Arteaga Galvez.  
C/Enrique Granados N 13. Primer Piso. Letra B.  
Majadahonda CP 28222, Spain

Information includes: Upon information and belief, full dispute up to his departure from Vital Dent at the end of 2007.

2. Pedro Langa, Calle Campamento, Patio 1, Puerta 12, Valencia, 46035, Spain.  
  
Telephone: 011-34-654-019-421

Information includes: Upon information and belief, full dispute but from June 2007 only, up to approximately end of April 2008 only.

3. Dylan Jeannotte, Esq. , 1212 East Mountain Rd. South, Cold Spring, New York 10516.

Information includes: Vital Dent's Conference at the Waldorf Astoria promoting investment in Vital Dent's US franchises, and Plaintiff Garcia's trip to Florida in November, 2007.

4. Jose M. Sanchez, Esq., formerly in house counsel, Franchisor's Miami Office, 555 555 Washington Blvd, Miami Lakes, FL.

Information includes: Organizing Plaintiff Ocean Creek International, LLC, and Mito and Mara LLC. Franchisor's business in Florida. Vital Dent's allegedly brilliant future in the US. Pedro Langa's job performance. Performance of Franchisor's Miami Office.

5. Ernesto Colman Mena, Valle de Alcudia n1 Ed. Fiteni, Las Rozas, Madrid, 28232, Spain.

Information includes: Upon information and belief, full dispute.

6. Pedro Bejar, upon information and belief formerly with Vital Dent's New York Office and in charge of Vital Dent USA. Mr Bejar substituted Mr Pedro Langa.

Information includes: Upon information and belief, replacement of second hand material delivered to Plaintiffs' Franchise Location, sums Chase withheld from Franchise Location. Demand for \$88,973.54 which Pedro Bejar alleged Plaintiff Ocean Creek International, LLC owed Vital Dent.

7. Raquel Visiedo Martinez, Passatge Del Doctor Fleming número 3, Premiá de Mar Cp 08330. Barcelona, Spain. Telephones: 011-34-93-754-7649 or 011-34- 93-750-8414.

Information includes: Positive impression of Vital Dent's expansion plans in the US. Initially Plaintiff Juan Carlos Amor Garcia's partner in Vital Dent Franchises in US.

8. Dr Ivan E. Terrero, 12715 Aviano Dr, Naples, FL 34105, Phone 917-796-76 24.

Information includes: Use of Ivan E. Terrero DDS FL8, PA, to open bank account at Wachovia Bank (formerly, currently Wells Fargo) in his name for Franchise Location with his own seal. Use of said account to pay for dentists performing dental services to patients of the Franchise Location. Chase PTS and/or Chase Health Advance withholdings to Franchise Location, due to dental services to patients that had not been provided at Franchisor's other Vital Dent Clinics that had closed.

9. Yurima Aday, formerly with Vital Dent's Miami Office, 555 Washington Avenue, Suite 350, Miami Beach FL, 33139. Telephone: 305-604-5707.

Information includes: Scant support Vital Dent's Miami Office provided to Franchise Location.

10. Miriam Suarez, Vital Dent's Sales Manager, formerly with Vital Dent's Miami Office, 555 Washington Avenue, Suite 350, Miami Beach FL, 33139. Telephone: 305-604-5707.

Information includes: Whatever information she obtained in light of the fact she substituted Pedro Langa as Franchisor's executive responsible for Vital Dent's operation in Florida.

11. Mercedes Lopez, formerly with Vital Dent's Miami Office, 555 Washington Avenue, Suite 350, Miami Beach FL, 33139. Telephone: 305-604-5707. Present address is unknown.

Information includes: Use of Ivan E. Terrero DDS FL8, PA, to open bank account at Wachovia Bank (formerly, currently Wells Fargo) in Dr Terrero's name, for Franchise Location and with Dr Terrero's own seal. Use of said account to pay for dentists Performing dental services to patients of the Franchise Location. Delays in opening Plaintiffs' Franchise Location. Second hand material received at Plaintiffs' Franchise Location.

12. Maria Gabriella Negron, former bookkeeper at Franchisor's Miami Office, 555 Washington Avenue, Suite 350, Miami Beach FL, 33139. Telephone: 305-604-5707. Present address is unknown.

Information includes: Communications with Teleco S Florida pertaining to underpowered second hand computers delivered to Plaintiffs' Franchise Location.

13. Jose Ignacio Romero, formerly Vital Dent's New York Office, 519 8th Avenue, New York, NY, 10018. Telephone: 646-763-8832. Cellular: 917-519-5793-Present address and telephone are unknown.

Information includes: Upon information and belief, certain matters having to do with Vital Dent's business in the US.

14. Francesco Paladino ([fpaladino@verizon.net](mailto:fpaladino@verizon.net)).

Information includes: Certain matters having to do with Chase PTS and/or Chase Health Advance withholdings to Franchise Location, due to dental services to patients that had not been provided at Franchisor's other Vital Dent Clinics that had closed. Communications with Chase Health Advantage.

15. Craig Lojewski, VP Technology Teleco S Florida, 606 S Military Trail, Deerfield Beach, FL 33442. Telephone: 954-312-0460 (Direct).

Information includes: Plaintiffs' problems with underpowered computers delivered to Plaintiffs' Franchise Location.

16. Victoria Collins, Chase PTS.

Information includes: Patients who had financed their dental care at Plaintiffs' Vital Dent Office and refunds to patients who complained of lack of treatment at Vital Dent other clinics. Moneys advanced to Vital Dent's other clinics (not Plaintiffs' Vital Dent Office).

17. Michele Lipner, Chase Health Advance, Practice Services Manager, PO BOX 15130, Wilmington, DE 19850-5130. Telephone: 1-855-229-3061.

Information includes: Termination of Agreement between Ivan Terrero, DDS FL8, PA and Chase Health Advance.

18. Eddie G. (last name withheld for patient privacy purposes).

Information includes: Dental Services provided at Plaintiffs' Franchise Location.

Payments this patient of Franchise Location made to Chase PTS and/or Chase Health Advance.

19. Patricia F. F. (last name withheld for patient privacy purposes).

Information includes: Dental Services provided at Plaintiffs' Franchise Location.

Payments this patient of Franchise Location made to Chase PTS and/or Chase Health Advance.

20. Luisa F. (last name withheld for patient privacy purposes).

Information includes: Dental Services provided at Plaintiffs' Franchise Location.

Payments this patient of Franchise Location made to Chase PTS and/or Chase Health Advance.

21. Emilio T. (last name withheld for patient privacy purposes).

Information includes: Dental Services provided at Plaintiffs' Franchise Location.

Payments this patient of Franchise Location made to Chase PTS and/or Chase Health Advance.



22. Camille R. (last name withheld for patient privacy purposes).

Information includes: Dental Services provided at Plaintiffs' Franchise Location.

Payments this patient of Franchise Location made to Chase PTS and/or Chase Health Advance.

23. Peter R. (last name withheld for patient privacy purposes).

Information includes: Dental Services provided at Plaintiffs' Franchise Location.

Payments this patient of Franchise Location made to Chase PTS and/or Chase Health Advance.

24. Victor S. (last name withheld for patient privacy purposes).

Information includes: Dental Services provided at Plaintiffs' Franchise Location.

Payments this patient of Franchise Location made to Chase PTS and/or Chase Health Advance.

25. Alex de Armas, Hersh Vitalini Corazzini, PA, 300 Aragon Avenue, Suite 330, Coral Gables, FL 33134. Telephone: 305-567-0602.

Information includes: Upon information and belief, delay in opening Plaintiffs' Franchise Location.

26. Burton Hersh, Architect, Hersh Vitalini Corazzini, PA, 300 Aragon Avenue, Suite 330, Coral Gables, FL 33134. Telephone: 305-567-0602.

Information includes: Upon information and belief, delay in opening Plaintiffs' Franchise Location.

27. William Peirson Randall, Jr, WPR Contracting, Inc., 3400 Fairfax Lane, Davie, FL 33330-4627. Telephone: 954-349-9910. Cellular: 954-658-4328.

Information includes: Delays in opening Plaintiffs' Franchise Location including Franchisor's payment delays to WPR Contracting.

28. Marjorie Vega (WPR Contracting, Inc.), Assistant to William Peirson Randall, Jr. Cellular: 954-349-9910.

Information includes: Delays in opening Plaintiffs' Franchise Location including Franchisor's payment delays to WPR Contracting. Matters pertaining to second hand material received at Plaintiffs' Franchise Location.

29. Sandra Fernandez, formerly with Franchisor's Miami Office, 555 Washington Blvd, Miami Lakes, FL.

Information includes: Delays in opening Plaintiffs' Franchise Location.

30. Yolanda Garcia, formerly with Franchisor's Miami Office, 555 Washington Blvd, Miami Lakes, FL.

Information includes: Upon information and belief, Franchisor's marketing in Florida.

31. Jules Paoletti, Henry Schein, Inc., NE Regional Manager, Corporate Headquarters  
135 Duryea Road, Melville, NY 11747.

Telephone: 1-631-843-5500

Cell: 610-476-4693

Information includes: Three (3) replacement dental chairs that were replaced at  
Plaintiffs' Franchise Location.

32. Maria Capote.

Information includes: Replacement at Plaintiffs' Franchise Location of malfunctioning X  
Ray Machine originating from Vital dent's Boston Clinic.

33. Emiliano Terciado, Office World.

Information includes: Replacement at Plaintiffs' Franchise Location of second hand  
reception desk table. Communications with Pedro Langa pertaining to said replacement  
reception desk table.

34. Lou (last name unknown).

Information includes: Second hand material delivered to Plaintiffs' Franchise Location originating from Vital dent's Boston Clinic.

35. Carmen Aguirre.

Information includes: Unknown to Plaintiffs.

36. Eva Barranco, AU Consultores, Paseo de la Habana, 170, Madrid, Spain 28036

Telephone: 011-34-91-343-0328.

Information includes: Three (3) courses on non-technical matters imparted to Florida Franchisees at Coral Gables Hotel, Miami, Florida.

37. Miguel Calandriello, former Vital Dent franchisee.

Information includes: Franchisor's business in Florida, and problems associated with it. Franchisor's offer to its Florida franchisees to either accept \$75,000 in exchange for a release of all claims against Vital Dent, or alternatively sell their respective Vital Dent Florida Clinics back to Franchisor East River International LLC for upon information and belief about half of what said franchisees had initially paid Franchisor. Upon information and belief, terms of actual agreement to receive \$75,000 from Franchisor, and in

exchange release Franchisor from all claims. Vital Dent's Conference at the Waldorf Astoria promoting investment in Vital Dent's US franchises.

38. Oscar Ferrer, former Vital Dent franchisee. Telephone: 954-404-0153 and/or 011-34-93-766-4566.

Information includes: Franchisor's business in Florida, and problems associated with it.

Sold his interest in Vital Clinic to his partner Miguel Calandriello, which Miguel Calandriello was recipient of purchase offer from Franchisor East River International LLC, *please see above at #37*. Vital Dent's Conference at the Waldorf Astoria promoting investment in Vital Dent's US franchises. Vital Dent's Conference in Madrid for its franchisees promoting investment in Vital Dent's US franchises.

39. Jacobo Sicre, former Vital Dent franchisee, jsicre@yahoo.com.

Information includes: Franchisor's business in Florida, and problems associated with it.

Franchisor's offer to Jacobo Sicre to sell his Vital Dent Florida Clinic back to Franchisor East River International LLC for upon information and belief half of what said franchisee had initially paid Franchisor. Upon information and belief, terms of actual agreement encapsulating sale of his franchise to Franchisor.

40. Giordano Martinez, former Vital Dent franchisee, giordanomartinez@hotmail.com.

Information includes: Franchisor's business in Florida, and problems associated with it.

Franchisor's offer to Giordano Martinez to sell his Vital Dent Florida Clinic back to Franchisor East River International LLC for upon information and belief half of what said franchisee had initially paid Franchisor. Upon information and belief, terms of actual agreement encapsulating sale of his franchise to Franchisor. Vital Dent's Conference at the Waldorf Astoria promoting investment in Vital Dent's US franchises.

41. Aitor Martinez, former Vital Dent franchisee.

Information includes: Franchisor's business in Florida, and problems associated with it.

Franchisor's offer to Giordano Martinez to sell his Vital Dent Florida Clinic back to Franchisor East River International LLC for upon information and belief half of what said franchisee had initially paid Franchisor. Upon information and belief, terms of actual agreement encapsulating sale of his franchise to Franchisor. Vital Dent's Conference at the Waldorf Astoria promoting investment in Vital Dent's US franchises.

42. Ciro Loza, former Vital Dent franchisee.

Information includes: Franchisor's business in Florida, and problems associated with it.

Franchisor's offer to Giordano Martinez to sell his Vital Dent Florida Clinic back to Franchisor East River International LLC for upon information and belief half of what said franchisee had initially paid Franchisor. Upon information and belief, terms of actual agreement encapsulating sale of his franchise to Franchisor.

43. Rafael Loza, brother of former Vital Dent franchisee Ciro Loza, Manager of Vital Dent Country Walk, Miami, FL.

Information includes: Franchisor's business in Florida, and problems associated with it.

44. Fernando Terry, former Vital Dent franchisee.

Information includes: Franchisor's business in Florida, and problems associated with it.

Franchisor's offer to Giordano Martinez to sell his Vital Dent Florida Clinic back to Franchisor East River International LLC for upon information and belief half of what said franchisee had initially paid Franchisor. Upon information and belief, terms of actual agreement encapsulating sale of his franchise to Franchisor.

45. Joaquin Bolanos.

Information includes: Upon information and belief, terms and conditions of franchise agreement to open a Vital Dent Clinic in Florida.

46. Eduardo Velasquez Miralles.

Information includes: Upon information and belief, terms and conditions of franchise agreement to open a Vital Dent Clinic in Florida.

47. Carlos Quer.

Information includes: Upon information and belief, terms and conditions of franchise agreement to open a Vital Dent Clinic in Florida.

48. Enrique Julia.

Information includes: Unknown.

49. Diaz Carmona.

Information includes: Unknown.

50. Justin M. Pearson, Esq.

Information includes: Certain matters having to do with Chase PTS and/or Chase Health Advance withholdings to Franchise Location, due to dental services to patients that had not been provided at Franchisor's other Vital Dent Clinics that had closed.

51. Martin Harryhill, General Manager/Leasing Associate, Pompano Citi Centre/Faison & Associates, 1955 N. Federal Highway-Suite 201, Pompano Beach, FL 33062.

Office Telephone: 954-943-4683.

Information includes: Lease Agreement between Hudson River International, LLC and Faison-Pompano Citi Centre, LLC. Franchisor's abandonment of Florida market. Upon



information and belief, terms and conditions of Agreement with Hudson River International, LLC pursuant to which Ernesto Colman Mena's personal guaranty was terminated. Lease Agreement with Ocean Creek International, LLC.

52. Jordi Torrens, Esq.

Information includes: Plaintiff Juan Carlos Amor Garcia's and Patricia Teneses' E-2 Visa. Matters pertaining to Plaintiff Juan Carlos Amor Garcia's investment in a Vital Dent Franchise required to file said E-2 Visa application.

53. Oscar Salamanca, Spanish lawyer, Director Legal Dept., Clinicas Vitaldent, Valle de Alcudia n1 Ed. Fiteni, Las Rozas, Madrid, 28232, Spain, Tel: 011-34-91-375-6560.

Information includes: Plaintiff Juan Carlos Amor Garcia's negotiations with Franchisor and/or Ernesto Colman Mena at the time Ernesto Colman Mena informed Plaintiff Garcia that Franchisor was abandoning the US market. Together with Rafael Guitian, represented Franchisor with respect to its offers to Plaintiff Garcia.

54. Rafael Guitian, Spanish Lawyer, upon information and belief, Director Finance Dept., Clinicas Vitaldent, Valle de Alcudia n1 Ed. Fiteni, Las Rozas, Madrid, 28232, Spain, Tel: 011-34-91-375-6560.

Information includes: Telephone calls with Plaintiff Juan Carlos Amor Garcia having to do with offers to Plaintiff Garcia incident to Franchisor's abandonment of the US

market. Plaintiff Juan Carlos Amor Garcia's negotiations with Franchisor and/or Ernesto Colman Mena. Together with Oscar Salamanca, represented Franchisor with respect to its offers to Plaintiff Garcia. Upon information and belief, Ernesto Colman Mena's telephone call to Plaintiff Juan Carlos Amor Garcia pertaining to Franchisor's departure from the US market. Ernesto Colman Mena.

55. Patricia Tellez de Meneses, 1991 North East 30th Court, Lighthouse Point, FL 33064.

Telephone (cellular): 954-608-9600.

Information includes: Full dispute as experienced by Plaintiffs and/or as related by Juan Carlos Amor Garcia.

56. Juan Carlos Amor Garcia: 1991 North East 30th Court, Lighthouse Point, FL 33064.

Telephone (cellular): 561-201-6660.

Information includes: Full dispute as experienced by Plaintiffs.

**Rule 26(a)(1)(A)(ii)**

## **II. COPIES OF DOCUMENTS**

Plaintiffs are in possession of the within documents bates numbered ZLO 1 through ZLO 1053, the size of which exceed the 4 megabytes limit for ECF Filing. Plaintiffs will under separate cover on 09-28-2011 cause copies of said documents to be hand delivered to Defendants' Counsellors, Duane Morris LLP (John Dellaportas, Esq.-Kevin Potere, Esq.)

**Rule 26(a)(1)(A)(iii)****III. COMPUTATION OF DAMAGES**

1. Plaintiffs have sustained damages in an amount to be determined at trial but estimated to be no less than \$5,658,321.20, representing the sum of Defendants' estimated \$5,165,440 net before amortization (EBITDA) for years 1-10 which Defendants represented in writing to Plaintiff Juan Carlos Amor Garcia the Franchise Location would yield, plus \$16,933.20 for the damages Chase Bank withheld including the \$850.00 paid to Attorney Pearson, *See paragraphs 276-277 of Plaintiffs' First Verified Amended Complaint*, plus \$475,948.00 in consequential damages.
  
2. The chart herein below breaks down the approximately \$651,396 that Plaintiff Juan Carlos Amor Garcia paid to various entities controlled by Defendants and to the Franchise Location's Architects at Defendant Javier Arteaga's instructions.

<b>SUMS PLAINTIFF GARCIA PAID TO VARIOUS OF THE DEFENDANTS, AND TO THE ARCHITECTS AT DEFENDANT ARTEAGA'S INSTRUCTIONS</b>	
<b>PAID TO</b>	<b>AMOUNT</b>
Defendant Arteaga	€ 18,560.00
Architects Hersh Vitalini Corazzini P.A.	\$8,000.00
Defendant AT International	€ 38,315.00

Defendant Colman (€ 150,000 - \$180,000)	\$17,031
Defendant East River	\$525,740.00

3. The chart herein below breaks down Plaintiff Garcia's out of pocket damages to date, pertaining to those funds Chase PTS and/or Chase Health Advance refused to pay to Ivan E. Terrero DDS FL8, PA, the PA Defendants caused Plaintiffs to use to pay dentists and also to cash all proceeds from dental services rendered at the Franchise Location.

<b>DAMAGES PERTAINING TO FUNDS CHASE BANK WITHHELD</b>	
<b>PAID TO</b>	<b>AMOUNT</b>
Chase Bank Funds Withheld	\$16,083.20
Justin Pearson, Esq. (FL)	\$850.00
<b>TOTAL:</b>	<b>\$16,933.20</b>

4. The chart herein below breaks down Plaintiff Garcia's consequential damages to date.

<b>CONSEQUENTIAL DAMAGES</b>	
<b>ITEM OF DAMAGES</b>	<b>AMOUNT</b>
LOST PROFITS RE: SIRA-DENTAL	\$392,000.00

PERSONAL EXPENSES NET	\$83,948.00
TOTAL:	\$475,948.00

Sira-Dental was Plaintiff Garcia's Vital Dent Clinic in Barcelona, Spain, that at Defendant Colman's urging, Plaintiff Garcia sold in April 2007 to Vital Dent in order to purchase the Franchise Location in Pompano Beach, FL.

The \$83,948 in personal expenses net represent those personal expenses Plaintiff Garcia Expended by virtue of relocating to Pompano Beach, FL, which Plaintiff Garcia would not have expended had Plaintiff Garcia and his partner Patricia Meneses remained in Spain. Said \$83,948 are accruing. Said \$83,948 represent the sum of \$88,500.00 in rental accommodations in Pompano Beach, FL from June 1<sup>st</sup>, 2007 to the date of Plaintiffs' First Verified Complaint + \$15,000 Plaintiff Garcia expended in furnishing their Pompano Beach apartment + \$13,598.00 for four (4) trips to and from Spain that Plaintiff Garcia and Patricia Meneses undertook (Airfare and Hotels) of \$13,598.00, each such trip related to their investment in the Franchise Location – the approximately \$33,150.00 that Plaintiff Garcia has received in rent from his Apartment in Barcelona, Spain.

Thus:  $\$83,948 = \$88,500.00 + \$15,000 + \$13,598.00 - \$33,150.00$ .

**Rule 26(a)(1)(A)(iv)**

**IV. INSURANCE**

Plaintiffs, at this time, are not aware of any insurance agreement under which any persons carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in favor of Plaintiffs or to indemnify or reimburse Defendants for payments to satisfy the judgment.

Dated: September 27, 2011

Respectfully submitted,



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Kevin Potere, Esq.

